

30 **Money Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 None

34 **Utah Code Sections Affected:**

35 AMENDS:

36 **49-12-203**, as last amended by Laws of Utah 2014, Chapters 15, 201, and 365

37 **49-13-203**, as last amended by Laws of Utah 2014, Chapters 15 and 365

38 **49-22-201**, as last amended by Laws of Utah 2014, Chapter 15

39 **49-22-203**, as last amended by Laws of Utah 2014, Chapters 15 and 365

40 **49-22-303**, as last amended by Laws of Utah 2011, Chapter 439

41 **49-22-401**, as last amended by Laws of Utah 2013, Chapters 310 and 316

42 **49-23-201**, as last amended by Laws of Utah 2014, Chapter 15

43 **49-23-401**, as last amended by Laws of Utah 2013, Chapter 316

44 ENACTS:

45 **49-22-205**, Utah Code Annotated 1953

46 **49-22-503**, Utah Code Annotated 1953

47 **49-23-203**, Utah Code Annotated 1953

48 **49-23-504**, Utah Code Annotated 1953



50 *Be it enacted by the Legislature of the state of Utah:*

51 Section 1. Section **49-12-203** is amended to read:

52 **49-12-203. Exclusions from membership in system.**

53 (1) The following employees are not eligible for service credit in this system:

54 (a) subject to the requirements of Subsection (2), an employee whose employment
55 status is temporary in nature due to the nature or the type of work to be performed;

56 (b) except as provided under Subsection (3)(a), an employee of an institution of higher
57 education who participates in a retirement system with a public or private retirement system,

58 organization, or company designated by the State Board of Regents during any period in which
59 required contributions based on compensation have been paid on behalf of the employee by the
60 employer;

61 (c) an employee serving as an exchange employee from outside the state;

62 (d) an executive department head of the state, a member of the State Tax Commission,
63 the Public Service Commission, and a member of a full-time or part-time board or commission
64 who files a formal request for exemption;

65 (e) an employee of the Department of Workforce Services who is covered under
66 another retirement system allowed under Title 35A, Chapter 4, Employment Security Act;

67 (f) an employee who is employed on or after July 1, 2009, with an employer that has
68 elected, prior to July 1, 2009, to be excluded from participation in this system under Subsection
69 [49-12-202\(2\)\(c\)](#);

70 (g) an employee who is employed on or after July 1, 2014, with an employer that has
71 elected, prior to July 1, 2014, to be excluded from participation in this system under Subsection
72 [49-12-202\(2\)\(d\)](#); or

73 (h) an employee who is employed with a withdrawing entity that has elected, prior to
74 January 1, 2017, to exclude new employees from participation in this system under Subsection
75 [49-11-623\(3\)](#).

76 (2) If an employee whose status is temporary in nature due to the nature of type of
77 work to be performed:

78 (a) is employed for a term that exceeds six months and the employee otherwise
79 qualifies for service credit in this system, the participating employer shall report and certify to
80 the office that the employee is a regular full-time employee effective the beginning of the
81 seventh month of employment; or

82 (b) was previously terminated prior to being eligible for service credit in this system
83 and is reemployed within three months of termination by the same participating employer, the
84 participating employer shall report and certify that the member is a regular full-time employee
85 when the total of the periods of employment equals six months and the employee otherwise

86 qualifies for service credits in this system.

87 (3) (a) Upon cessation of the participating employer contributions, an employee under
88 Subsection (1)(b) is eligible for service credit in this system.

89 (b) Notwithstanding the provisions of Subsection (1)(f), any eligibility for service
90 credit earned by an employee under this chapter before July 1, 2009 is not affected under
91 Subsection (1)(f).

92 (c) Notwithstanding the provisions of Subsection (1)(g), any eligibility for service
93 credit earned by an employee under this chapter before July 1, 2014, is not affected under
94 Subsection (1)(g).

95 (4) Upon filing a written request for exemption with the office, the following
96 employees shall be exempt from coverage under this system:

97 (a) a full-time student or the spouse of a full-time student and individuals employed in
98 a trainee relationship;

99 (b) an elected official;

100 (c) an executive department head of the state, a member of the State Tax Commission,
101 a member of the Public Service Commission, and a member of a full-time or part-time board or
102 commission;

103 (d) an employee of the Governor's Office of Management and Budget;

104 (e) an employee of the Governor's Office of Economic Development;

105 (f) an employee of the Commission on Criminal and Juvenile Justice;

106 (g) an employee of the Governor's Office;

107 (h) an employee of the State Auditor's Office;

108 (i) an employee of the State Treasurer's Office;

109 (j) any other member who is permitted to make an election under Section [49-11-406](#);

110 (k) a person appointed as a city manager or chief city administrator or another person
111 employed by a municipality, county, or other political subdivision, who is an at-will employee;
112 and

113 (l) an employee of an interlocal cooperative agency created under Title 11, Chapter 13,

114 Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided through
115 membership in a labor organization that provides retirement benefits to its members.

116 (5) (a) Each participating employer shall prepare a list designating those positions
117 eligible for exemption under Subsection (4).

118 (b) An employee may not be exempted unless the employee is employed in an
119 exempted position designated by the participating employer.

120 (6) (a) In accordance with this section, Section 49-13-203, and Section 49-22-205, a
121 municipality, county, or political subdivision may not exempt a total of more than 50 positions
122 or a number equal to 10% of the employees of the municipality, county, or political
123 subdivision, whichever is [~~lesser~~] less.

124 (b) A municipality, county, or political subdivision may exempt at least one regular
125 full-time employee.

126 (7) Each participating employer shall:

127 (a) file employee exemptions annually with the office; and

128 (b) update the employee exemptions in the event of any change.

129 (8) The office may make rules to implement this section.

130 Section 2. Section **49-13-203** is amended to read:

131 **49-13-203. Exclusions from membership in system.**

132 (1) The following employees are not eligible for service credit in this system:

133 (a) subject to the requirements of Subsection (2), an employee whose employment
134 status is temporary in nature due to the nature or the type of work to be performed;

135 (b) except as provided under Subsection (3)(a), an employee of an institution of higher
136 education who participates in a retirement system with a public or private retirement system,
137 organization, or company designated by the State Board of Regents during any period in which
138 required contributions based on compensation have been paid on behalf of the employee by the
139 employer;

140 (c) an employee serving as an exchange employee from outside the state;

141 (d) an executive department head of the state or a legislative director, senior executive

142 employed by the governor's office, a member of the State Tax Commission, a member of the
143 Public Service Commission, and a member of a full-time or part-time board or commission
144 who files a formal request for exemption;

145 (e) an employee of the Department of Workforce Services who is covered under
146 another retirement system allowed under Title 35A, Chapter 4, Employment Security Act;

147 (f) an employee who is employed with an employer that has elected to be excluded
148 from participation in this system under Subsection 49-13-202(5), effective on or after the date
149 of the employer's election under Subsection 49-13-202(5); or

150 (g) an employee who is employed with a withdrawing entity that has elected, prior to
151 January 1, 2017, to exclude new employees from participation in this system under Subsection
152 49-11-623(3).

153 (2) If an employee whose status is temporary in nature due to the nature of type of
154 work to be performed:

155 (a) is employed for a term that exceeds six months and the employee otherwise
156 qualifies for service credit in this system, the participating employer shall report and certify to
157 the office that the employee is a regular full-time employee effective the beginning of the
158 seventh month of employment; or

159 (b) was previously terminated prior to being eligible for service credit in this system
160 and is reemployed within three months of termination by the same participating employer, the
161 participating employer shall report and certify that the member is a regular full-time employee
162 when the total of the periods of employment equals six months and the employee otherwise
163 qualifies for service credits in this system.

164 (3) (a) Upon cessation of the participating employer contributions, an employee under
165 Subsection (1)(b) is eligible for service credit in this system.

166 (b) Notwithstanding the provisions of Subsection (1)(f), any eligibility for service
167 credit earned by an employee under this chapter before the date of the election under
168 Subsection 49-13-202(5) is not affected under Subsection (1)(f).

169 (4) Upon filing a written request for exemption with the office, the following

170 employees shall be exempt from coverage under this system:

171 (a) a full-time student or the spouse of a full-time student and individuals employed in
172 a trainee relationship;

173 (b) an elected official;

174 (c) an executive department head of the state, a member of the State Tax Commission,
175 a member of the Public Service Commission, and a member of a full-time or part-time board or
176 commission;

177 (d) an employee of the Governor's Office of Management and Budget;

178 (e) an employee of the Governor's Office of Economic Development;

179 (f) an employee of the Commission on Criminal and Juvenile Justice;

180 (g) an employee of the Governor's Office;

181 (h) an employee of the State Auditor's Office;

182 (i) an employee of the State Treasurer's Office;

183 (j) any other member who is permitted to make an election under Section [49-11-406](#);

184 (k) a person appointed as a city manager or chief city administrator or another person
185 employed by a municipality, county, or other political subdivision, who is an at-will employee;

186 (l) an employee of an interlocal cooperative agency created under Title 11, Chapter 13,
187 Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided through
188 membership in a labor organization that provides retirement benefits to its members; and

189 (m) an employee of the Utah Science Technology and Research Initiative created under
190 Title 63M, Chapter 2, Utah Science Technology and Research Governing Authority Act.

191 (5) (a) Each participating employer shall prepare a list designating those positions
192 eligible for exemption under Subsection (4).

193 (b) An employee may not be exempted unless the employee is employed in a position
194 designated by the participating employer.

195 (6) (a) In accordance with this section, [Section 49-12-203](#), and [Section 49-22-205](#), a
196 municipality, county, or political subdivision may not exempt a total of more than 50 positions
197 or a number equal to 10% of the employees of the municipality, county, or political

198 subdivision, whichever is [~~lesser~~] less.

199 (b) A municipality, county, or political subdivision may exempt at least one regular
200 full-time employee.

201 (7) Each participating employer shall:

202 (a) file employee exemptions annually with the office; and

203 (b) update the employee exemptions in the event of any change.

204 (8) The office may make rules to implement this section.

205 Section 3. Section **49-22-201** is amended to read:

206 **49-22-201. System membership -- Eligibility.**

207 (1) Beginning July 1, 2011, a participating employer shall participate in this system.

208 (2) (a) A person initially entering regular full-time employment with a participating
209 employer on or after July 1, 2011, who does not have service credit accrued before July 1,
210 2011, in a Tier I system or plan administered by the board, is eligible:

211 (i) as a member for service credit and defined contributions under the Tier II hybrid
212 retirement system established by Part 3, Tier II Hybrid Retirement System; or

213 (ii) as a participant for defined contributions under the Tier II defined contribution plan
214 established by Part 4, Tier II Defined Contribution Plan.

215 (b) A person initially entering regular full-time employment with a participating
216 employer on or after July 1, 2011, shall:

217 (i) make an election to participate in the system created under this chapter [~~within 30~~
218 ~~days from the date of eligibility for accrual of benefits~~]:

219 (A) as a member for service credit and defined contributions under the Tier II hybrid
220 retirement system established by Part 3, Tier II Hybrid Retirement System; or

221 (B) as a participant for defined contributions under the Tier II defined contribution plan
222 established by Part 4, Tier II Defined Contribution Plan; and

223 (ii) electronically submit to the office notification of the member's election under
224 Subsection (2)(b)(i) in a manner approved by the office.

225 (c) An election made by a person initially entering regular full-time employment with a

226 participating employer under this Subsection (2) is irrevocable beginning one year from the
227 date of eligibility for accrual of benefits.

228 (d) If no election is made under Subsection (2)(b)(i), the person shall become a
229 member eligible for service credit and defined contributions under the Tier II hybrid retirement
230 system established by Part 3, Tier II Hybrid Retirement System.

231 (3) Notwithstanding the provisions of this section and except as provided in Subsection
232 (4), an elected official initially entering office on or after July 1, 2011:

233 (a) is only eligible to participate in the Tier II defined contribution plan established
234 under [~~Chapter 22,~~] Part 4, Tier II Defined Contribution Plan; and

235 (b) is not eligible to participate in the Tier II hybrid retirement system established
236 under [~~Chapter 22,~~] Part 3, Tier II Hybrid Retirement System.

237 (4) Notwithstanding the provisions of Subsection (3), a legislator or full-time elected
238 official initially entering office on or after July 1, 2011, who has service credit accrued before
239 July 1, 2011:

240 (a) in a Tier I retirement system or plan administered by the board shall continue in the
241 Tier I system or plan for which the legislator or full-time elected official is eligible; or

242 (b) in a Tier II hybrid retirement system shall continue in the Tier II system for which
243 the legislator or full-time elected official is eligible.

244 Section 4. Section **49-22-203** is amended to read:

245 **49-22-203. Exclusions from membership in system.**

246 (1) The following employees are not eligible for service credit in this system:

247 (a) subject to the requirements of Subsection (2), an employee whose employment
248 status is temporary in nature due to the nature or the type of work to be performed;

249 (b) except as provided under Subsection (3), an employee of an institution of higher
250 education who participates in a retirement system with a public or private retirement system,
251 organization, or company designated by the State Board of Regents during any period in which
252 required contributions based on compensation have been paid on behalf of the employee by the
253 employer;

- 254 (c) an employee serving as an exchange employee from outside the state;
- 255 (d) an employee of the Department of Workforce Services who is covered under
- 256 another retirement system allowed under Title 35A, Chapter 4, Employment Security Act; [or]
- 257 (e) an employee who is employed with a withdrawing entity that has elected, prior to
- 258 January 1, 2017, to exclude new employees from participation in this system under Subsection
- 259 [49-11-623\(3\)](#)[~~-~~]; or
- 260 (f) a person who files a written request for exemption with the office under Section
- 261 [49-22-205](#).

262 (2) If an employee whose status is temporary in nature due to the nature of type of
263 work to be performed:

264 (a) is employed for a term that exceeds six months and the employee otherwise
265 qualifies for service credit in this system, the participating employer shall report and certify to
266 the office that the employee is a regular full-time employee effective the beginning of the
267 seventh month of employment; or

268 (b) was previously terminated prior to being eligible for service credit in this system
269 and is reemployed within three months of termination by the same participating employer, the
270 participating employer shall report and certify that the member is a regular full-time employee
271 when the total of the periods of employment equals six months and the employee otherwise
272 qualifies for service credits in this system.

273 (3) Upon cessation of the participating employer contributions, an employee under
274 Subsection (1)(b) is eligible for service credit in this system.

275 Section 5. Section **49-22-205** is enacted to read:

276 **49-22-205. Exemptions from participation in system.**

277 (1) Upon filing a written request for exemption with the office, the following
278 employees are exempt from participation in the system as provided in this section:

- 279 (a) an elected official;
- 280 (b) an executive department head of the state;
- 281 (c) a member of the State Tax Commission;

- 282 (d) a member of the Public Service Commission;
- 283 (e) a member of a full-time or part-time board or commission;
- 284 (f) an employee of the Governor's Office of Management and Budget;
- 285 (g) an employee of the Governor's Office of Economic Development;
- 286 (h) an employee of the Commission on Criminal and Juvenile Justice;
- 287 (i) an employee of the Governor's Office;
- 288 (j) an employee of the State Auditor's Office;
- 289 (k) an employee of the State Treasurer's Office;
- 290 (l) any other member who is permitted to make an election under Section [49-11-406](#);
- 291 (m) a person appointed as a city manager or appointed as a city administrator or
292 another at-will employee of a municipality, county, or other political subdivision;
- 293 (n) an employee of an interlocal cooperative agency created under Title 11, Chapter 13,
294 Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided through
295 membership in a labor organization that provides retirement benefits to its members; and
- 296 (o) an employee of the Utah Science Technology and Research Initiative created under
297 Title 63M, Chapter 2, Utah Science Technology and Research Governing Authority Act.
- 298 (2) (a) A participating employer shall prepare a list designating those positions eligible
299 for exemption under Subsection (1).
- 300 (b) An employee may not be exempted unless the employee is employed in a position
301 designated by the participating employer under Subsection (1).
- 302 (3) (a) In accordance with this section, Section [49-12-203](#), and Section [49-13-203](#), a
303 municipality, county, or political subdivision may not exempt a total of more than 50 positions
304 or a number equal to 10% of the employees of the municipality, county, or political
305 subdivision, whichever is less.
- 306 (b) A municipality, county, or political subdivision may exempt at least one regular
307 full-time employee.
- 308 (4) Each participating employer shall:
- 309 (a) file each employee exemption annually with the office; and

- 310 (b) update an employee exemption in the event of any change.
- 311 (5) Beginning on the effective date of the exemption for an employee who elects to be
- 312 exempt in accordance with Subsection (1):
- 313 (a) for a member of the Tier II defined contribution plan:
- 314 (i) the participating employer shall contribute the nonelective contribution and the
- 315 amortization rate described in Section 49-22-401, except that the nonelective contribution is
- 316 exempt from the vesting requirements of Subsection 49-22-401(3)(a); and
- 317 (ii) the member may make voluntary deferrals as provided in Section 49-22-401; and
- 318 (b) for a member of the Tier II hybrid retirement system:
- 319 (i) the participating employer shall contribute the nonelective contribution and the
- 320 amortization rate described in Section 49-22-401, except that the contribution is exempt from
- 321 the vesting requirements of Subsection 49-22-401(3)(a);
- 322 (ii) the member may make voluntary deferrals as provided in Section 49-22-401; and
- 323 (iii) the member is not eligible for additional service credit in the system.
- 324 (6) If an employee who is a member of the Tier II hybrid retirement system
- 325 subsequently revokes the election of exemption made under Subsection (1), the provisions
- 326 described in Subsection (5)(b) shall no longer be applicable and the coverage for the employee
- 327 shall be effective prospectively as provided in Part 3, Tier II Hybrid Retirement System.
- 328 (7) (a) All employer contributions made on behalf of an employee shall be invested in
- 329 accordance with Subsection 49-22-303(3)(a) or 49-22-401(4)(a) until the one-year election
- 330 period under Subsection 49-22-201(2)(c) is expired if the employee:
- 331 (i) elects to be exempt in accordance with Subsection (1); and
- 332 (ii) continues employment with the participating employer through the one-year
- 333 election period under Subsection 49-22-201(2)(c).
- 334 (b) An employee is entitled to receive a distribution of the employer contributions
- 335 made on behalf of the employee and all associated investment gains and losses if the employee:
- 336 (i) elects to be exempt in accordance with Subsection (1); and
- 337 (ii) terminates employment prior to the one-year election period under Subsection

338 [49-22-201\(2\)\(c\)](#).

339 (8) (a) The office shall make rules to implement this section.

340 (b) The rules made under this Subsection (8) shall include provisions to allow the
341 exemption provided under Subsection (1) to apply to all contributions made beginning on or
342 after July 1, 2011, on behalf of an exempted employee who began the employment before May
343 8, 2012.

344 Section 6. Section **49-22-303** is amended to read:

345 **49-22-303. Defined contribution benefit established -- Contribution by employer**
346 **and employee -- Vesting of contributions -- Plans to be separate -- Tax-qualified status of**
347 **plans.**

348 (1) (a) A participating employer shall make a nonelective contribution on behalf of
349 each regular full-time employee who is a member of this system in an amount equal to 10%
350 minus the contribution rate paid by the employer pursuant to Subsection [49-22-301\(2\)\(a\)](#) of the
351 member's compensation to a defined contribution plan qualified under Section 401(k) of the
352 Internal Revenue Code which:

353 (i) is sponsored by the board; and
354 (ii) has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.

355 (b) The member may make voluntary deferrals to:

356 (i) the qualified 401(k) plan which receives the employer contribution described in this
357 Subsection (1); or

358 (ii) at the member's option, another defined contribution plan established by the
359 participating employer.

360 (2) (a) The total amount contributed by the participating employer under Subsection
361 (1)(a), including associated investment gains and losses, vests to the member upon accruing
362 four years of service credit under this title.

363 (b) The total amount contributed by the member under Subsection (1)(b) vests to the
364 member's benefit immediately and is nonforfeitable.

365 (3) (a) Contributions made by a participating employer under Subsection (1)(a) shall be

366 invested in a default option selected by the board until the member is vested in accordance with
367 Subsection (2)(a).

368 (b) A member may direct the investment of contributions made by a participating
369 employer under Subsection (1)(a) only after the contributions have vested in accordance with
370 Subsection (2)(a).

371 (c) A member may direct the investment of contributions made by the member under
372 Subsection (1)(b).

373 (4) No loans shall be available from contributions made by a participating employer
374 under Subsection (1)(a).

375 (5) No hardship distributions shall be available from contributions made by a
376 participating employer under Subsection (1)(a).

377 (6) (a) Except as provided in Subsection (6)(b) and Section 49-22-205, if a member
378 terminates employment with a participating employer prior to the vesting period described in
379 Subsection (2)(a), all contributions, including associated investment gains and losses, made by
380 a participating employer on behalf of the member under Subsection (1)(a) are subject to
381 forfeiture.

382 (b) If a member who terminates employment with a participating employer prior to the
383 vesting period described in Subsection (2)(a) subsequently enters employment with the same or
384 another participating employer within 10 years of the termination date of the previous
385 employment:

386 (i) all contributions made by the previous participating employer on behalf of the
387 member, including associated investment gains and losses, shall be reinstated upon
388 employment as a regular full-time employee; and

389 (ii) the length of time that the member worked with the previous employer shall be
390 included in determining whether the member has completed the vesting period under
391 Subsection (2)(a).

392 (c) The office shall establish a forfeiture account and shall specify the uses of the
393 forfeiture account, which may include an offset against administrative costs or employer

394 contributions made under this section.

395 (7) The office may request from any other qualified 401(k) plan under Subsection (1)
396 or (2) any relevant information pertaining to the maintenance of its tax qualification under the
397 Internal Revenue Code.

398 (8) The office may take any action which in its judgment is necessary to maintain the
399 tax-qualified status of its 401(k) defined contribution plan under federal law.

400 Section 7. Section **49-22-401** is amended to read:

401 **49-22-401. Contributions -- Rates.**

402 (1) Up to the amount allowed by federal law, the participating employer shall make a
403 nonelective contribution of 10% of the participant's compensation to a defined contribution
404 plan.

405 (2) (a) The participating employer shall contribute the 10% nonelective contribution
406 described in Subsection (1) to a defined contribution plan qualified under Section 401(k) of the
407 Internal Revenue Code which:

408 (i) is sponsored by the board; and

409 (ii) has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.

410 (b) The member may make voluntary deferrals to:

411 (i) the qualified 401(k) plan which receives the employer contribution described in this
412 Subsection (2); or

413 (ii) at the member's option, another defined contribution plan established by the
414 participating employer.

415 (c) In addition to the percent specified under Subsection (2)(a), the participating
416 employer shall pay the corresponding Tier I system amortization rate of the employee's
417 compensation to the office to be applied to the employer's corresponding Tier I system liability.

418 (3) (a) Except as provided under Subsection (3)(c), the total amount contributed by the
419 participating employer under Subsection (2)(a) vests to the member upon accruing four years
420 employment as a regular full-time employee under this title.

421 (b) The total amount contributed by the member under Subsection (2)(b) vests to the

422 member's benefit immediately and is nonforfeitable.

423 (c) Upon filing a written request for exemption with the office, ~~[the following~~
424 ~~employees are]~~ an eligible employee is exempt from the vesting requirements of Subsection
425 (3)(a)[:] in accordance with Section 49-22-205.

426 ~~[(i) an executive department head of the state;]~~

427 ~~[(ii) a member of the State Tax Commission;]~~

428 ~~[(iii) a member of the Public Service Commission;]~~

429 ~~[(iv) an employee of the Governor's Office of Management and Budget;]~~

430 ~~[(v) an employee of the Governor's Office of Economic Development;]~~

431 ~~[(vi) an employee of the Commission on Criminal and Juvenile Justice;]~~

432 ~~[(vii) an employee of the Governor's Office;]~~

433 ~~[(viii) an employee of the State Auditor's Office;]~~

434 ~~[(ix) an employee of the State Treasurer's Office;]~~

435 ~~[(x) a person appointed as a city manager or appointed as a city administrator or~~
436 ~~another at-will employee of a municipality, county, or other political subdivision;]~~

437 ~~[(xi) an employee of an interlocal cooperative agency created under Title 11, Chapter~~
438 ~~13, Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided~~
439 ~~through membership in a labor organization that provides retirement benefits to its members;~~
440 ~~and]~~

441 ~~[(xii) an employee of the Utah Science Technology and Research Initiative created~~
442 ~~under Title 63M, Chapter 2, Utah Science Technology and Research Governing Authority Act.]~~

443 ~~[(d) (i) A participating employer shall prepare a list designating those positions eligible~~
444 ~~for exemption under Subsection (3)(c).]~~

445 ~~[(ii) An employee may not be exempted unless the employee is employed in a position~~
446 ~~designated by the participating employer under Subsection (3)(c).]~~

447 ~~[(e) (i) All employer contributions made on behalf of an employee shall be invested in~~
448 ~~accordance with Subsection 49-22-303(3)(a) until the one-year election period under~~
449 ~~Subsection 49-22-201(2)(c) is expired if the employee:]~~

450 ~~[(A) elects to be exempt in accordance with Subsection (3)(c); and]~~
451 ~~[(B) continues employment with the participating employer through the one-year~~
452 ~~election period under Subsection 49-22-201(2)(c).]~~
453 ~~[(ii) An employee is entitled to receive a distribution of the employer contributions~~
454 ~~made on behalf of the employee and all associated investment gains and losses if the~~
455 ~~employee:]~~
456 ~~[(A) elects to be exempt in accordance with Subsection (3)(c); and]~~
457 ~~[(B) terminates employment prior to the one-year election period under Subsection~~
458 ~~49-22-201(2)(c).]~~
459 ~~[(f) (i) In accordance with this section, a municipality, county, or political subdivision~~
460 ~~may not exempt more than 50 positions or a number equal to 10% of the employees of the~~
461 ~~municipality, county, or political subdivision, whichever is less.]~~
462 ~~[(ii) A municipality, county, or political subdivision may exempt at least one regular~~
463 ~~full-time employee.]~~
464 ~~[(g) Each participating employer shall:]~~
465 ~~[(i) file each employee exemption annually with the office; and]~~
466 ~~[(ii) update an employee exemption in the event of any change.]~~
467 ~~[(h) (i) The office shall make rules to implement this Subsection (3).]~~
468 ~~[(ii) The rules made under Subsection (3)(h)(i) shall include provisions to allow the~~
469 ~~exemption provided under Subsection (3)(c) to apply to all contributions made beginning on or~~
470 ~~after July 1, 2011, on behalf of an exempted employee who began the employment before May~~
471 ~~8, 2012.]~~
472 (4) (a) Contributions made by a participating employer under Subsection (2)(a) shall be
473 invested in a default option selected by the board until the member is vested in accordance with
474 Subsection (3)(a).
475 (b) A member may direct the investment of contributions including associated
476 investment gains and losses made by a participating employer under Subsection (2)(a) only
477 after the contributions have vested in accordance with Subsection (3)(a).

478 (c) A member may direct the investment of contributions made by the member under
479 Subsection (3)(b).

480 (5) No loans shall be available from contributions made by a participating employer
481 under Subsection (2)(a).

482 (6) No hardship distributions shall be available from contributions made by a
483 participating employer under Subsection (2)(a).

484 (7) (a) Except as provided in Subsection (7)(b), if a member terminates employment
485 with a participating employer prior to the vesting period described in Subsection (3)(a), all
486 contributions made by a participating employer on behalf of the member including associated
487 investment gains and losses under Subsection (2)(a) are subject to forfeiture.

488 (b) If a member who terminates employment with a participating employer prior to the
489 vesting period described in Subsection (3)(a) subsequently enters employment with the same or
490 another participating employer within 10 years of the termination date of the previous
491 employment:

492 (i) all contributions made by the previous participating employer on behalf of the
493 member including associated investment gains and losses shall be reinstated upon the member's
494 employment as a regular full-time employee; and

495 (ii) the length of time that the member worked with the previous employer shall be
496 included in determining whether the member has completed the vesting period under
497 Subsection (3)(a).

498 (c) The office shall establish a forfeiture account and shall specify the uses of the
499 forfeiture account, which may include an offset against administrative costs or employer
500 contributions made under this section.

501 (8) The office may request from any other qualified 401(k) plan under Subsection (2)
502 any relevant information pertaining to the maintenance of its tax qualification under the
503 Internal Revenue Code.

504 (9) The office may take any action which in its judgment is necessary to maintain the
505 tax-qualified status of its 401(k) defined contribution plan under federal law.

506 Section 8. Section **49-22-503** is enacted to read:

507 **49-22-503. Death of members -- Exemption from vesting requirements for**
508 **employer nonelective contributions to defined contribution plan.**

509 (1) (a) If an active member dies, employer nonelective contributions made on behalf of
510 the employee to a defined contribution plan under Section [49-22-303](#) or [49-22-401](#) are exempt
511 from the vesting requirements of Subsections [49-22-303\(2\)\(a\)](#) and [49-22-401\(3\)\(a\)](#).

512 (b) The total amount of nonelective contributions made by the participating employer
513 vests to the member upon death and the member's beneficiary is entitled to receive a
514 distribution of the employer contributions made on behalf of the employee and all associated
515 investment gains and losses.

516 (2) Employer contributions vested and distributed under this section are in addition to
517 and separate from the benefits payable under Sections [49-22-501](#) and [49-22-502](#).

518 Section 9. Section **49-23-201** is amended to read:

519 **49-23-201. System membership -- Eligibility.**

520 (1) Beginning July 1, 2011, a participating employer that employs public safety service
521 employees or firefighter service employees shall participate in this system.

522 (2) (a) A public safety service employee or a firefighter service employee initially
523 entering employment with a participating employer on or after July 1, 2011, who does not have
524 service credit accrued before July 1, 2011, in a Tier I system or plan administered by the board,
525 is eligible:

526 (i) as a member for service credit and defined contributions under the Tier II hybrid
527 retirement system established by Part 3, Tier II Hybrid Retirement System; or

528 (ii) as a participant for defined contributions under the Tier II defined contributions
529 plan established by Part 4, Tier II Defined Contribution Plan.

530 (b) A public safety service employee or a firefighter service employee initially entering
531 employment with a participating employer on or after July 1, 2011, shall:

532 (i) make an election to participate in the system created under this chapter [~~within 30~~
533 ~~days from the date of eligibility for accrual of benefits~~]:

534 (A) as a member for service credit and defined contributions under the Tier II hybrid
535 retirement system established by Part 3, Tier II Hybrid Retirement System; or

536 (B) as a participant for defined contributions under the Tier II defined contribution plan
537 established by Part 4, Tier II Defined Contribution Plan; and

538 (ii) electronically submit to the office notification of the member's election under
539 Subsection (2)(b)(i) in a manner approved by the office.

540 (c) An election made by a public safety service employee or firefighter service
541 employee initially entering employment with a participating employer under this Subsection (2)
542 is irrevocable beginning one year from the date of eligibility for accrual of benefits.

543 (d) If no election is made under Subsection (2)(b)(i), the public safety service employee
544 or firefighter service employee shall become a member eligible for service credit and defined
545 contributions under the Tier II hybrid retirement system established by Part 3, Tier II Hybrid
546 Retirement System.

547 Section 10. Section **49-23-203** is enacted to read:

548 **49-23-203. Exemptions from participation in system.**

549 (1) Upon filing a written request for exemption with the office, the following
550 employees are exempt from participation in the system as provided in this section if the
551 employee is a public safety service employee and is:

552 (a) an executive department head of the state;

553 (b) an elected or appointed sheriff of a county; or

554 (c) an elected or appointed chief of police of a municipality.

555 (2) (a) A participating employer shall prepare a list designating those positions eligible
556 for exemption under Subsection (1).

557 (b) An employee may not be exempted unless the employee is employed in a position
558 designated by the participating employer under Subsection (1).

559 (3) Each participating employer shall:

560 (a) file each employee exemption annually with the office; and

561 (b) update an employee exemption in the event of any change.

562 (4) Beginning on the effective date of the exemption for an employee who elects to be
563 exempt in accordance with Subsection (1):

564 (a) for a member of the Tier II defined contribution plan:

565 (i) the participating employer shall contribute the nonelective contribution and the
566 amortization rate described in Section 49-23-401, except that the contribution is exempt from
567 the vesting requirements of Subsection 49-23-401(3)(a); and

568 (ii) the member may make voluntary deferrals as provided in Section 49-23-401; and

569 (b) for a member of the Tier II hybrid retirement system:

570 (i) the participating employer shall contribute the nonelective contribution and the
571 amortization rate described in Section 49-23-401, except that the contribution is exempt from
572 the vesting requirements of Subsection 49-23-401(3)(a);

573 (ii) the member may make voluntary deferrals as provided in Section 49-23-401; and

574 (iii) the member is not eligible for additional service credit in the system.

575 (5) If an employee who is a member of the Tier II hybrid retirement system
576 subsequently revokes the election of exemption made under Subsection (1), the provisions
577 described in Subsection (4)(b) shall no longer be applicable and the coverage for the employee
578 shall be effective prospectively as provided in Part 3, Tier II Hybrid Retirement System.

579 (6) (a) All employer contributions made on behalf of an employee shall be invested in
580 accordance with Subsection 49-23-302(3)(a) or 49-23-401(4)(a) until the one-year election
581 period under Subsection 49-23-201(2)(c) is expired if the employee:

582 (i) elects to be exempt in accordance with Subsection (1); and

583 (ii) continues employment with the participating employer through the one-year
584 election period under Subsection 49-23-201(2)(c).

585 (b) An employee is entitled to receive a distribution of the employer contributions
586 made on behalf of the employee and all associated investment gains and losses if the employee:

587 (i) elects to be exempt in accordance with Subsection (1); and

588 (ii) terminates employment prior to the one-year election period under Subsection
589 49-23-201(2)(c).

590 (7) (a) The office shall make rules to implement this section.

591 (b) The rules made under this Subsection (7) shall include provisions to allow the
592 exemption provided under Subsection (1) to apply to all contributions made beginning on or
593 after July 1, 2011, on behalf of an exempted employee who began the employment before May
594 8, 2012.

595 Section 11. Section **49-23-401** is amended to read:

596 **49-23-401. Contributions -- Rates.**

597 (1) Up to the amount allowed by federal law, the participating employer shall make a
598 nonelective contribution of 12% of the participant's compensation to a defined contribution
599 plan.

600 (2) (a) The participating employer shall contribute the 12% nonelective contribution
601 described in Subsection (1) to a defined contribution plan qualified under Section 401(k) of the
602 Internal Revenue Code which:

603 (i) is sponsored by the board; and

604 (ii) has been grandfathered under Section 1116 of the Federal Tax Reform Act of 1986.

605 (b) The member may make voluntary deferrals to:

606 (i) the qualified 401(k) plan which receives the employer contribution described in this
607 Subsection (2); or

608 (ii) at the member's option, another defined contribution plan established by the
609 participating employer.

610 (c) In addition to the percent specified under Subsection (2)(a), the participating
611 employer shall pay the corresponding Tier I system amortization rate of the employee's
612 compensation to the office to be applied to the employer's corresponding Tier I system liability.

613 (3) (a) Except as provided under Subsection (3)(c), the total amount contributed by the
614 participating employer under Subsection (2)(a) vests to the member upon accruing four years of
615 service credit under this title.

616 (b) The total amount contributed by the member under Subsection (2)(b) vests to the
617 member's benefit immediately and is nonforfeitable.

618 (c) Upon filing a written request for exemption with the office, ~~[the following~~
619 ~~employees are]~~ an eligible employee is exempt from the vesting requirements of Subsection
620 (3)(a) ~~[if the employee is a public safety service employee and is:]~~ in accordance with Section
621 49-23-203.

622 ~~[(i) an executive department head of the state;]~~
623 ~~[(ii) an elected or appointed sheriff of a county; or]~~
624 ~~[(iii) an elected or appointed chief of police of a municipality.]~~

625 ~~[(d) (i) A participating employer shall prepare a list designating those positions eligible~~
626 ~~for exemption under Subsection (3)(c).]~~

627 ~~[(ii) An employee may not be exempted unless the employee is employed in a position~~
628 ~~designated by the participating employer under Subsection (3)(c).]~~

629 ~~[(e) (i) All employer contributions made on behalf of an employee shall be invested in~~
630 ~~accordance with Subsection 49-23-302(3)(a) until the one-year election period under~~
631 ~~Subsection 49-23-201(2)(c) is expired if the employee:]~~

632 ~~[(A) elects to be exempt in accordance with Subsection (3)(c); and]~~
633 ~~[(B) continues employment with the participating employer through the one-year~~
634 ~~election period under Subsection 49-23-201(2)(c).]~~

635 ~~[(ii) An employee is entitled to receive a distribution of the employer contributions~~
636 ~~made on behalf of the employee and all associated investment gains and losses if the~~
637 ~~employee:]~~

638 ~~[(A) elects to be exempt in accordance with Subsection (3)(c); and]~~
639 ~~[(B) terminates employment prior to the one-year election period under Subsection~~
640 ~~49-23-201(2)(c).]~~

641 ~~[(f) Each participating employer shall:]~~

642 ~~[(i) file each employee exemption annually with the office; and]~~
643 ~~[(ii) update an employee exemption in the event of any change.]~~

644 ~~[(g) (i) The office shall make rules to implement this Subsection (3).]~~
645 ~~[(ii) The rules made under Subsection (3)(g)(i) shall include provisions to allow the~~

646 ~~exemption provided under Subsection (3)(c) to apply to all contributions made beginning on or~~
647 ~~after July 1, 2011, on behalf of an exempted employee who began the employment before May~~
648 ~~8, 2012.]~~

649 (4) (a) Contributions made by a participating employer under Subsection (2)(a) shall be
650 invested in a default option selected by the board until the member is vested in accordance with
651 Subsection (3)(a).

652 (b) A member may direct the investment of contributions, including associated
653 investment gains and losses, made by a participating employer under Subsection (2)(a) only
654 after the contributions have vested in accordance with Subsection (3)(a).

655 (c) A member may direct the investment of contributions made by the member under
656 Subsection (3)(b).

657 (5) No loans shall be available from contributions made by a participating employer
658 under Subsection (2)(a).

659 (6) No hardship distributions shall be available from contributions made by a
660 participating employer under Subsection (2)(a).

661 (7) (a) Except as provided in Subsection (7)(b), if a member terminates employment
662 with a participating employer prior to the vesting period described in Subsection (3)(a), all
663 contributions made by a participating employer on behalf of the member under Subsection
664 (2)(a), including associated investment gains and losses are subject to forfeiture.

665 (b) If a member who terminates employment with a participating employer prior to the
666 vesting period described in Subsection (3)(a) subsequently enters employment with the same or
667 another participating employer within 10 years of the termination date of the previous
668 employment:

669 (i) all contributions made by the previous participating employer on behalf of the
670 member, including associated investment gains and losses, shall be reinstated upon the
671 member's employment as a regular full-time employee; and

672 (ii) the length of time that the member worked with the previous employer shall be
673 included in determining whether the member has completed the vesting period under

674 Subsection (3)(a).

675 (c) The office shall establish a forfeiture account and shall specify the uses of the
676 forfeiture account, which may include an offset against administrative costs of employer
677 contributions made under this section.

678 (8) The office may request from any other qualified 401(k) plan under Subsection (2)
679 any relevant information pertaining to the maintenance of its tax qualification under the
680 Internal Revenue Code.

681 (9) The office may take any action which in its judgment is necessary to maintain the
682 tax-qualified status of its 401(k) defined contribution plan under federal law.

683 Section 12. Section **49-23-504** is enacted to read:

684 **49-23-504. Death of members -- Exemption from vesting requirements for**
685 **employer nonelective contributions to defined contribution plan.**

686 (1) (a) If an active member dies, employer nonelective contributions made on behalf of
687 the employee to a defined contribution plan under Section [49-23-302](#) or [49-23-401](#) are exempt
688 from the vesting requirements of Subsections [49-23-302\(2\)\(a\)](#) and [49-23-401\(3\)\(a\)](#).

689 (b) The total amount of nonelective contributions made by the participating employer
690 vests to the member upon death and the member's beneficiary is entitled to receive a
691 distribution of the employer contributions made on behalf of the employee and all associated
692 investment gains and losses.

693 (2) Employer contributions vested and distributed under this section are in addition to
694 and separate from the benefits payable under Sections [49-23-501](#), [49-23-502](#), and [49-23-503](#).